

CONGRESSIONAL RECORD — SENATE

November 17, 1983

and it was in this spirit that our man, the Senator from Arizona, worked so diligently to accommodate the legitimate concerns of the witnesses at our public hearings and our colleagues on the committee. Thus, several amendments were incorporated in the substitute bill which we ordered reported to the Senate. Three of these are of especial importance:

First, the amended bill assures that the CIA's new exemptive authority will be subject to judicial review. A court will have jurisdiction to determine whether implementing regulations conform to statutory criteria; that is to say, whether they have a rational basis. Broader review is required if a plaintiff makes a *prima facie* showing that a specific file was improperly designated or that a document was improperly placed in a designated file. This preliminary threshold was considered appropriate in light of the special source and method sensitivity of operational files. Upon a proper showing, the court must order the Agency to file a sworn response, which may be *in camera* and *ex parte* if it contains classified information, and must order an appropriate search if it finds against the Agency.

Second, the amended bill makes it clear that any information reviewed and relied upon in an official investigation of any alleged improper or illegal intelligence activity will remain subject to search and review under FOIA, even if found exclusively in an exempt designated file. It is understood and agreed that any record in such a file which is relevant to an investigation, but was overlooked or deliberately withheld, would be accessible through the judicial review provisions of the bill. Such a record would be deemed improperly placed in an exempt designated file.

The third amendment requires that implementing regulations provide procedures and criteria for the review of each exemption designation not less than once every 10 years. The criteria will include the historical or other public interest value of the subject matter of the file and the potential for declassifying a significant part of the contents. In this connection, the Director of Central Intelligence, Mr. Casey, has indicated his willingness to expand the CIA's rather limited program for reviewing and declassifying historical intelligence files. I certainly will join in efforts to assure that adequate resources are provided.

I am pleased that the CIA has expressed its support for the measured approach to the Freedom of Information Act represented by S. 1324, as amended. The Agency's cooperation with the committee in finding compromises on difficult issues has resulted in a bill which should serve the public interest in more efficient processing of FOIA requests, while giving better protection to intelligence sources and methods. I wish also to thank my distinguished colleagues, the Senator

from Vermont (Mr. LEAHY), the Senator from Kentucky (Mr. HUBBLETON), the Senator from Minnesota (Mr. DURENBERGER), and the Senator from Hawaii (Mr. INOUYE) for the suggestions we incorporated in this legislation.

Mr. President, I believe that the amendments to this legislation constitute significant improvements. The committee shares this view as evidenced by its unanimous vote to report S. 1324 favorably to the Senate. I urge that our colleagues join us in supporting passage of this bill.

Mr. DURENBERGER. Mr. President, the bill before us today is a clear signal that the system works. It demonstrates a strong oversight role by the Senate in matters of intelligence; it validates the principles which underlie the Freedom of Information Act; and it recognizes the compelling need to provide security for those matters which must remain secure, while insuring the maximum possible public understanding of the role which our intelligence agencies play in policy. In short, the bill is a sound balancing of the need for information and the need for security.

I'd like briefly to remind my colleagues of just how far we have come with this measure. I clearly recognize that there are legitimate limits on, and exemptions from, the FOIA when we are dealing with intelligence matters. However, as introduced, S. 1324 did not adequately address certain important concerns.

In a statement before the committee on June 28, I expressed my reservations about these specific issues. I felt that the initial proposal could have denied to historians and other analysts needed information which could inform future generations; that it could have been misinterpreted, ironically, to prevent the release of information already declassified; and that it could have been construed as an absolute claim of exemption from judicial review.

I was not alone in these and other concerns. As a result, several of us on the committee spent many hours discussing these important issues. The result, after prolonged discussions with Director Casey and others, is the bill before us today. I think it is a good piece of work, and that it deserves our support.

Let me close by noting one aspect of this bill which I feel merits special attention—the procedures created to permit the maximum possible research by historians and others.

Policymakers assume office with a fixed amount of intellectual capital. They draw on that capital over time when making crucial decisions. If they lack a sufficient understanding of how the processes of government have failed in the past, they are likely to make avoidable mistakes. It is imperative for sound Government that those who serve have the best possible understanding of history and policy. The

better the understanding, the better the performance on the job.

Persons who devote an entire career to one agency or bureaucracy are likely to develop that kind of understanding over time. But senior officials of the Government, who are appointed from other positions, must bring that knowledge with them. They can only get it through a lifetime of study, reading, education, and reflection.

I do not want to suggest that history always repeats itself. It does not. But patterns of behavior can often reoccur. That is why for instance, scholars and others spend so much time comparing and contrasting such things as the crises which led to World War I and World War II. The differences among these crises are important, and they inform much of our ongoing debate about things like deterrence, crisis management, and defense budgets. We all benefit from the massive research which has gone into those and other major events.

When a vital policy area is potentially exempt from all study, however, regardless of specifics, nobody benefits. Who among us does not wish that the senior officials charged with final authorization for the Bay of Pigs fiasco had spent a little more time reading and thinking about the limits of paramilitary operations? And who among us does not think that the decision to declassify sensitive information during the Cuban missile crisis was a major factor in both resolving that crisis and contributing to greater public understanding of the importance of good intelligence?

Had this legislation continued to deny access to selective historical files, nobody would have been well served. But in early October, Director Casey made an important concession when he wrote to me stating that the CIA would cooperate with the Archivist and other historians in the selective declassification of older files which are historically significant. Director Casey asked only for the extra money to hire more historians to assist in that matter. He is entitled to that funding, and this bill provides for it. It is money which is truly spent in the public interest, and I want once again to congratulate Bill Casey for his willingness to work with us on this and other matters.

Mr. President, I believe that the work which went into this bill shows that the public can continue to have full faith and confidence in its intelligence agencies and in the committees which oversee those agencies. I hope that we will pass the bill quickly.

Mr. THURMOND. Mr. President, I rise in strong support of S. 1324, the Intelligence Information Act of 1983, as reported by the Select Committee on Intelligence. I was pleased to join the distinguished Senator from Arizona, Chairman GOLDWATER, as an original cosponsor of this measure when it was introduced last spring.